

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3901 OF 2024
WITH
INTERIM APPLICATION NO. 3978 OF 2023
IN
CRIMINAL APPEAL NO. 1287 OF 2023

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Harshdeepsing Kisansing SiddhuApplicant
V/S
The State Of Maharashtra and Anr.Respondents

Adv. Ajinkya Kamble i/b. Adv. Parth P. Shah, for Applicant.
APP- R.D. Humane, for Respondent No.1/State.
Adv. Saili N. Dhuru for Respondent No. 2.
PSI- Bhairavnath Shelke, Deccan police Station.

CORAM : M.M. SATHAYE, J.

DATE : 29th NOVEMBER, 2024

P.C. :

1. Heard learned counsel for the Applicant, learned APP for Respondent No.1/State and learned counsel for Respondent No.2/original informant. IA/3978/2023 is filed for suspension of sentence and grant of interim bail pending appeal. IA/3901/2024 is filed for interim bail on medical ground that he is diabetic patients who's got injuries on his back.

2. Under impugned Judgment and order dated 05.07.2023 passed in Sp. POCSO No. 386 of 2016, the Applicant is convicted u/s. 376(2)(i)(n) of the Indian Penal Code, 1860 ('IPC' for short) and

u/s. 4 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short) and sentenced to suffer 10 years of Rigorous Imprisonment and fine.

3. Learned counsel for Respondent No.2 (privately appointed lawyer) has tendered an affidavit of Respondent No.2 sworn on 01.10.2024. The same is taken on record and marked 'R' for identification.

4. Perusal of said affidavit shows that the Respondent No.2 has stated that she is adult, as on today, and can lawfully take decision on her own. It is stated that she is acquainted with the Applicant since 2012 and since 2013, she is staying with the Applicant and his family. It is stated that since the Applicant was 18 years elder to Respondent No.2, the families of both the sides were not happy with the age gap. It is stated that the Applicant intends to marry the Applicant and forget the bitter past and pardon each other for mistakes and misunderstanding happened due to undue influence of other people. It is further stated that the Applicant is suffering from psoriasis. It is also stated that Respondent No.2 has no objection if application is allowed and sentence imposed upon the Applicant is suspended.

5. Based on this affidavit, learned counsel for the Respondent No. 2 submits that applications be allowed.

6. Learned counsel for the Applicant submitted that in the present case there is serious doubt about birth date and victim/informant's mother was not examined in support of the source information on

the basis of which birth certificate Ex. 43 is issued. He has relied on the Judgment of the Hon'ble Supreme Court in the case of **Satpal Singh Vs. State of Haryana**¹ especially para 27 thereof, to contend that a party can ask the Court to examine the source of information of a public record. He draws attention of the Court to evidence of PW-5 / Investigating Officer and submits that the Investigating Officer has admitted that while narrating the contents of the complaint, the victim stated the name of her father as Wasim Shaikh and the name of her mother as Asma, however in the xerox copy of the birth certificate produced by the victim, her father's name is not shown as Wasim and her mother's name is not shown as Asma. The theory of prosecution about victim's mother's second marriage is not well supported, either by publication in Government Gazette or otherwise.

7. The prosecution has not seriously opposed the joint request.

8. Prima facie, age of victim as deduced on the basis of said birth certificate Ex. 43 appears doubtful. Even according to said birth certificate the date of birth is 12.10.1995; therefore on the date of incident in May 2012, victim was apparently 16 years and 5 months old and this fact is duly considered by this Court while granting bail to the Applicant during Trial. Perusal of record shows that relationship was consensual.

9. Para 3 and 4 of the order of this Court dated 29.06.2016 in Criminal Bail Application No. 1262 of 2016 read thus :

1. Crim. Appeal No. 763 of 2008 Order dt. 28.07.2010

“3. Perused the F.I.R. as well as the papers of investigation. Perusal of the F.I.R. lodged by the prosecutrix goes to show that the alleged act of sexual intercourse by the present applicant was consensual act. Averment in the F.I.R. shows that after getting themselves acquainted with each other, the informant and applicant developed intimacy. Upon a call by the present applicant, by giving false reasons to her mother, the informant came all the way from Kolhapur to Pune to reside with the applicant. She has chosen to be with him at his own flat when there was nobody else in that flat. Thereafter, it is alleged by the prosecutrix that by offering spiked cold drink, the applicant committed rape on her. This is alleged to have happened in May, 2012. Perusal of the F.I.R. further shows that thereafter also both the parties indulged in physical intimacy. Even after abortion of the informant, she continued to have sexual relations with the present applicant.

4. Considering the nature of the allegations against the present applicant and the fact that even at the time of the first incident, the prosecutrix was on the verge of attaining majority, pre-trial detention of the applicant is not warranted and hence the order”

10. The Appeal is admitted in November 2023 and is not likely to be taken up for final hearing shortly. The Applicant has suffered detention behind bars for a period of one and a half year. In view of the aforesaid facts and circumstances and considering that Respondent No.2 who is now adult, has given consent with statements as indicated above, I am inclined to grant interim bail.

11. Hence, both the above applications are disposed of, by following order.

i) The remaining sentence of the Applicant under impugned order dated 05.07.2023 in Special POCSO No. 386 of 2016, is suspended.

ii) The Applicant - Harshdeepsing Kisansing Siddhu be released on bail on furnishing P.R. Bond in sum of Rs.15,000/- with one or more surety in like amount.

iii) The Applicant is directed to attend the concerned police station, during pendency of the appeal, if so required.

(M.M. SATHAYE, J.)